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Case No: LC-2023-387

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7 October 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

ON APPEAL FROM THE VALUATION TRIBUNAL FOR ENGLAND

RATING – HEREDITAMENT – whether a farm containing a racing yard and a point-to-point yard is one hereditament or two – whether racing yard is occupied jointly – paramount occupation in relation to the point-to-point yard – appeal allowed

BETWEEN:

Ms JOANNE MOORE (VALUATION OFFICER)

Appellant

-and-

CAROLINE BAILEY

Respondent

Holdenby North Lodge
Teeton,
Northampton NN6 8LG

Upper Tribunal Member Mark Higgin FRICS FIRRV
18 July 2024

Mr Edward Waldegrave for the appellant, instructed by HMRC solicitors' office
Mr Christopher Marriott for the respondent

The following cases are referred to in this decision:

Cardtronics UK Ltd v Sykes [2020] UKSC 21
Hollywell Union and Halkyn Parish v Halkyn District Mines Drainage Co [1895] AC 117
Hughes (VO) v Exeter City Council [2020] UKUT 7 (LC)
John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area [1949] 1 KB 344
Ludgate House Ltd v Ricketts (VO) [2020] EWCA Civ 1637
Prosser KC v Ricketts (VO) [2024] UKUT 264 (LC)
Westminster Council v Southern Railway Co [1936] AC 511
Woolway (VO) v Mazars LLP [2015] UKSC 53
Zhylzhaxynova v Moore (VO) [2024] UKUT 204 (LC)

Introduction

1. This is a 2017 rating list appeal from a decision of the Valuation Tribunal for England (VTE) that equestrian facilities at Holdenby North Lodge, Teeton, Northampton NN6 8LG (the Farm) comprise two hereditaments for the purposes of non-domestic rating. The appellant Valuation Officer (VO) says that the Farm is a single hereditament. The part of the Farm that does not benefit from an agricultural exemption to non-domestic rates was originally assessed as a Racing Yard and Premises at rateable value £30,750 but was reduced by the VO on 4 April 2018 to rateable value £24,500. Both assessments were effective from 1 April 2017 (the material day).

2. The Farm accommodates horses used for racing and is licenced for that purpose by the British Horseracing Authority (BHA); it also accommodates horses used for point-to-point events, for which no licence is required. On 1 December 2020 the respondent, Mrs Caroline Bailey, served a proposal on the VO seeking a reduction in assessment to rateable value £11,000. The proposal was made by Mr Christopher Marriott FRICS, acting as Mrs Bailey's agent, on the grounds that 'The rateable value shown in the rating list on 1 April 2017 was wrong'. As justification for the proposed alteration Mr Marriott relied on a decision of this Tribunal relating to Sandhill Stables near Minehead in Somerset which was published on 28 February 2017. The reason why it was said to be relevant was that it 'set the tone for all weather gallops as a proportion of the box value'. In section K of the form (explain why the rating list should be altered) Mr Marriott requested a division of the assessment between the two yards and provided a detailed justification. Notwithstanding his earlier reference to rateable value £11,000, Mr Marriott provided two valuations for the individual properties, one for the licenced yard at rateable value £11,000 and a 'possible' value of rateable value £6,750 for the point-to-point yard.

3. On 1 February 2022 the VO issued a decision notice stating her view that the property was correctly assessed as a single hereditament, but the assessment was further reduced to rateable value £19,000. The grounds of appeal to the VTE were not in the evidence before this Tribunal but the VTE identified the issue to be decided as whether the 'property should be split into two separate assessments', namely one relating to the licenced racing yard and the other to the point-to-point yard. The appellant in the current hearing did not raise the scope of the proposal as an issue and it appears that no separate proposal was submitted in relation to the point-to-point yard.

4. In her appeal to the VTE the respondent proposed a rateable value of £12,000 for the racing yard but did not specify the assessment for the point-to-point yard. The decision of the VTE was that the property was two hereditaments, and it determined the assessment of the licenced yard at rateable value £12,000. The question of the value of the point-to-point yard was not addressed. The operation of both yards ceased in 2022 and minimal use of the accommodation is currently being made.

5. A consequence of securing a division in assessment to a level of rateable value of £12,000 or less is that the licenced racing yard would fall within the scope of the current regime of small business rate relief as defined by the Non-Domestic Rating (Reliefs, Thresholds and Amendment) (England) Order 2017. The result in this case would be that the ratepayer would benefit from a 100% mitigation of their rates bill.

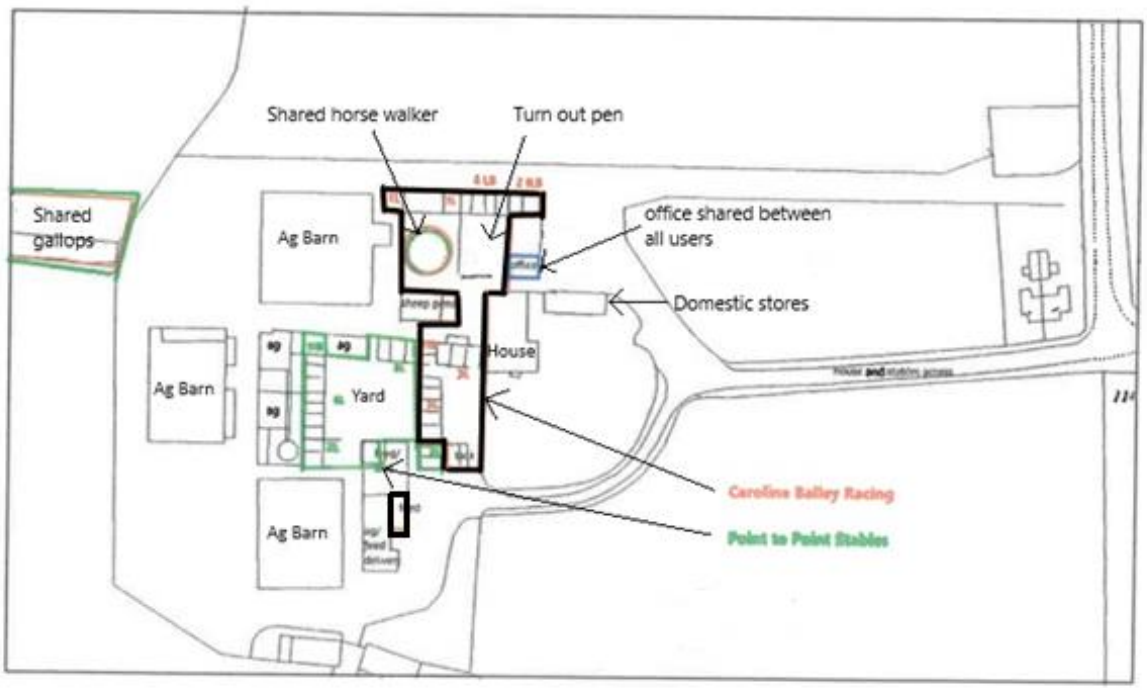
6. At the hearing the appellant was represented by Mr Edward Waldegrave of counsel and the respondent by Mr Marriott. I am grateful to them both. I inspected the Property on 12 July 2024 accompanied by Mrs Bailey, Mr Waldegrave and Mr Marriott. Mrs Heather King and Mr Tim Barraclough of the Valuation Office Agency were also present. Mrs Bailey and Mr Barraclough appeared as witnesses of fact at the hearing.

7. This is the latest in a series of appeals concerning proposals to divide existing hereditaments into two or more, the most recent of which are *Zhylzhaxynova v Jo Moore (VO)* [2024] UKUT 204 (LC) which concerned a proposal to divide the assessment of an industrial unit and *Prosser KC v Ricketts (VO)* [2024] UKUT 264 (LC) which dealt with barristers' chambers. I will begin by describing the Farm and the yards it contains. The arguments in the appeal will follow together with my findings of fact, and I will then examine the relevant law and come to my conclusion.

The Farm and yards

8. Holdenby North Lodge is a largely arable farm of some 373 acres located about 6.25 miles north west of Northampton. The plan below shows the layout of the farm buildings with a farmhouse, two cottages, barns, yards and all weather and grass gallops. It also shows, outlined with a heavy black line, the area used by the licenced racing yard managed by the respondent as 'Caroline Bailey Racing'. Adjoining it to the west is the area used for the point-to-point yard managed by her husband Mr Gerald Bailey. Both yards are of traditional style with loose boxes around gravel or concrete yards. The boxes are built of brick or local ironstone under pitched slate or corrugated sheeting roofs. The area used by Caroline Bailey Racing effectively comprises two small yards linked by a passageway formed by the end wall of one of the boxes and the flank wall of the farmhouse. Its boundaries are formed in part by the rear walls of the various boxes occupied by racehorses, the farmhouse, and sections of brick wall about 1.5 metres in height.

SITE PLAN



9. The plan shows a horse walker (a rotating device used for exercising horses) within the area of the licenced yard which was used to exercise both racing and point-to-point horses, as were the grass and all-weather gallops, situated on the western edge of the Farm complex. A small office, used in connection with all the business activities of the Farm, including both yards, is located adjacent to the licenced yard. All other buildings on the Farm are either domestic or agricultural in nature. Three horse box lorries and various items of agricultural machinery for harvesting and bailing hay were kept on the farm, outside the area for stabling and training horses.

10. The Farm is occupied under a tenancy agreement dated 21 February 1994 granted by James Lowther to Charles R Saunders and his son Christopher R Saunders. Charles Saunders, who was the father of Mrs Bailey, died in 2002. Christopher Saunders is the brother of Mrs Bailey and is usually known as 'Toby' which, for the avoidance of confusion, is how I will refer to him. Toby became the sole tenant on the death of his father.

11. Charles and Toby Saunders entered into the tenancy agreement as partners in C R Saunders and Partners, a partnership established in April 1993 and this partnership has carried out a farming business at the Farm since at least 1994. At the material day the partners were Toby himself, his mother, Mrs P J Saunders and Mrs Bailey. Mrs Bailey confirmed that Toby ran the farm on a day-to-day basis.

12. Clause 11.1 of the partnership agreement identifies Charles Saunders as managing partner with a casting vote in the event of a tied partnership vote. The agreement (at clause 11.2) requires that:

> "Each of the Partners shall devote such time and attention to the Partnership business as shall be agreed between them from time to time."

Clause 13.5 states that:

> "No Partner shall without the consent of the others :-
>
> Carry on in the name of the Partnership any business or other activity which shall not be directly concerned with the farming of the Farm."

13. Section 8 of the partnership agreement deals with profit sharing and clause 8.1 defines the distribution arrangements:

> "The income profits of the Partnership for each accounting year….shall be distributed as follows :-
>
> (a) Firstly payment to each of the Partners a salary at a rate as shall from time to time be agreed.
> (b) Thereafter the remaining profits and losses shall be divided between the Partners in equal shares or such other proportions as the Partners from time to time shall otherwise agree.

> PROVIDED always that it is an express term of this Partnership Agreement that Toby shall not derive any salary that may be paid to him nor be entitled to any share of profit which shall be attributable to the livery and racehorse training enterprise carried on upon the Farm and the partnership accounts shall be prepared so as to identify and separate the income and expenditure relating to such enterprise from the remaining agricultural enterprise of the Partnership"

14. Clause 8.2 states that:

> "The Partners shall be entitled to make drawings on account of their salary and/or profits of such sums and at such times as may be agreed between them from time to time."

15. The Respondents provided in evidence a copy of the partnership's trading and profit and loss accounts for 2016 and 2017. Under the heading of income these showed a single line for 'Horsekeep' amongst various other agricultural activities. At the hearing Mrs Bailey confirmed that 'Horsekeep' covered the training in both yards. In 2016 'Horsekeep' amounted to 31.4% of the total income of the partnership and the corresponding figure for 2017 was 39.5%. The accounts include a list of items of expenditure which are not subdivided between the different business streams although livery and horse race entry fees are shown as a separate item as are veterinary fees and medicines. However, since the partnership listed 'Livestock' as an item of income it appears that expenditure on veterinary fees and medicines relates to both livestock and racehorses. I conclude therefore that all income and expenditure from the two yards is included with the other activities of the Farm in the accounts. The accounts also show that in both years the profits were divided on the basis of 20% to Mrs P J Saunders, 40% to Toby and 40% to Mrs Bailey, notwithstanding the provisions of clause 8.1 of the partnership agreement. Mr Bailey was neither a partner in nor an employee of the partnership.

16. The tenancy agreement at clause 49 provides that the tenant has the landlord's consent to use the farm as a "point-to-point and hunter chaser livery yard". Clause 17(2) prohibits the subletting of any part of the Farm.

17. The partnership agreement states at clause 6.2.1 that:

> "the Partners shall share the occupation of the Farm for the purposes of the farming business the Partnership shall have no power to create any tenancy over the Farm or any part of it"

The use of the Farm

18. The training of licenced racehorses requires a licence from the BHA which as conditions of the grant, inspects the training premises and requires adherence to its rules and regulations. Mr Marriott provided extracts from BHA's guidance relating to licence applications and under the heading 'Training Yards and Facilities' it is stated at paragraph 13 that:

> 'If a licence to train is granted, it is on the understanding that it is restricted to training horses at or from the stables to which the application relates; it does not permit the applicant to train at or from any other stables. Application forms for

> the approval of a Change of Stables or new Additional Yard are available from the Licensing Team'

At paragraph 18 the guidance provides:

> 'The applicant or the person(s) who will run the proposed training business must have security of tenure in respect of the yard and training facilities and be entitled to carry on the proposed training business, for a minimum period of 12 months from the date of the issuance of the licence. In the case of a new application a copy of the draft lease or tenancy agreement will be required.'

This explanation suggests that it is the trainer who is licenced, rather than the premises, but that the licence permits the trainer to train horses only from the identified premises.

19. A separate regulatory regime (also under the authority of the BHA) exists for the training of point-to-point horses. A copy of the point-to-point regulations dated 2016 were adduced in evidence, and it can be seen that they are not concerned with the suitability of the trainer or the stables in which the horses are kept.

20. The use of part of the Farm as a licenced racing yard began in 2004 and it was noted by the landlord's agent in correspondence dated 14 December 2006 that as Mrs Bailey was running a 'full training yard' the position should be regularised by means of a licence consenting to this diversification. Mrs Bailey acknowledged in her evidence that she was not in possession of any written confirmation that the landlord had issued a licence to vary the terms of the Farm tenancy. It is not clear from either parties' evidence when Mr Bailey's management of the Point-to-Point yard commenced but it is agreed that it was in existence at the material day.

21. Mrs Bailey was successful in obtaining a trainer's licence and she surmised that the BHA must therefore have been satisfied that she had 12 months security of tenure. She has no tenancy of her own and Toby Saunders as tenant was prohibited from granting a tenancy to her or anyone else, but as she and Toby are in partnership in the business which occupies the Farm from which she carries on the licenced activity, her assumption may have been correct. Mr Barraclough of the VO put the question of security of tenure in circumstances such as those that existed at the Farm to Annette Baker, Senior Integrity Supervision Manager at the BHA in an e-mail dated 16 April 2024:

> *Mr Barraclough:* If D is applying to be a licenced racing trainer. The farm, which has required equine facilities, is occupied under an agricultural tenancy to a farming partnership of which D is a partner, would this satisfy your requirements for the security of tenure provisions as required under the BHA regulations?
>
> *Ms Baker:* The lease or sublease must be assigned to the trainer or their employing entity. If another party is named on the lease then we would ask that the trainer sought independent advice to establish that there is no issue with this and assess associated risks with another party being on the lease.

It is clear therefore that the BHA would not necessarily obstruct a trainer in Mrs Bailey's position and in practice she had security for so long as the partners wished to continue conducting the licenced training business from the yard.

22. The operation of the point-to-point yard did not require any security of tenure. Mr Bailey was not a partner in the partnership, and he used the yard without a tenancy. His occupation was with the permission of the partnership which paid all his bills and received the income.

23. Mr Marriott also provided a copy of an e-mail from Mr Ross Hamilton of the BHA in response to a query from Mr Marriott as to whether "there is an official BHA directive to the effect that any such arrangement requires the yards to be physically separated and that BHA licenced boxes cannot be used for point-to-pointers and vice versa?" Mr Hamilton responded that:

> "The principle under the licencing criteria is that on licenced premises a trainer can only have horses under their care or control that are either in training for running under Rules, temporarily out of training or in their sole ownership free from joint arrangements. Therefore, having Point-to-Point horses on licenced premises that are in the ownership of another person does not satisfy that principle.
>
> And this makes sense, the Point-to-Point regulations cover this issue from a pointing perspective. Horse eligibility (under Regulation 34 iv) is dependent on the horse not having been in the care of a licenced trainer/permit holder under the Rules of Racing for 28 days prior to registration of the Hunter Certificate unless the horse is the property of the trainer or immediate family. In your scenario this means that if the husband is training horses on behalf of others then they will not be eligible to run in Point-to-Point if on licenced premises. They require separate premises."

24. Although Mrs Bailey was training horses at the licenced yard under the trading style Caroline Bailey Racing she did not do so through a separate legal entity. Mrs Bailey was a sole trader for the purposes of BHA licencing and was in control of the licenced yard for the purpose of training horses that belonged to others. Copies of her licences from the BHA were included in her evidence. These covered the period from 2016 to 2022, were individual to Mrs Bailey and enabled her to train from the named stables on the licence. All of the income which she received and costs which she incurred in connection with her licenced training activities were entered in the partnership's accounts. In order to demonstrate the separation between Mrs Bailey's training activities and the partnership Mr Marriott provided photographs of a cheque book with the account name of C R Saunders t/a Caroline Bailey Racing. In reality this related to an account held and operated by the partnership. I was also shown a photograph of a second chequebook relating to 'C R Saunders Livery Account'. Income and expenses in connection with the point-to-point yard were also included in the partnership accounts, but Mrs Bailey said in her evidence that the point-to-point training was barely profitable and that her husband had other business interests including a dairy farm. Mrs Bailey explained that it was cost effective for the farm to have one set of accounts and that the equestrian activities were shown as separate items. All the staff associated with the licenced yard were employed by Mrs Bailey (as mandated by the BHA). Mrs Bailey included in her evidence a copy of an employment contract dated 10 August 2020 for a stable lass (apprentice). Mrs Bailey was shown as the employer but there was a proviso that the employer could be:

> "…such other person, company or partnership as he/she may from time to time require the employee to work for".

The place of work was recorded as Holdenby North Lodge. Staff for the point-to-point yard were employed by Mr Bailey but staff were shared where necessary. The wage bill for the two sets of staff was met by the partnership.

25. Although there are gates between the two yards, both the licenced and point-to-point horses had to traverse the farmyard to reach the shared gallops and the point-to-point horses had to enter the licenced yard to use the horse walker.

26. In terms of utilities, there is a single supply of each, and they are therefore shared between the Farm and the two yards. Mrs Bailey confirmed in her evidence that the two yards sometimes collaborated in the purchase of feed and bedding for the horses where the items were common to both yards and a discount could be secured for buying in bulk. As the yards have now closed and the equipment has been removed it was not possible at the time of my inspection to discern whether there was any demarcation or signage to differentiate the two yards.

27. The Appellant's evidence also included some screen shots of the website for Caroline Bailey Racing. The website is no longer operational but one of the pages is titled 'The Horses' with separate links to Point-to-Point and National Hunt (licenced horses). These pages provided details of the training for each and the names of the horses under training. The point-to point page said that point-to-pointers have been trained at the Farm for more than 40 years. A further page headed 'Meet the Team' included details and experience of both Mrs and Mr Bailey.

28. Beyond the training yards the remainder of the Farm is entirely given over to agricultural uses. At the time of my inspection most of the Farm appeared to be used for the cultivation of cereal crops and a small acreage was devoted to the raising of sheep. It was not apparent from my visit that either of the training yards had occupied any areas other than the yard space and the shared gallops but the website mentioned that:

> "The schooling facilities are within easy access of the yard, hurdles, small fences schooling tyres, and five larger steeplechase fences. There is also a large outdoor, all weather arena which is used for teaching the young horses to canter and jump. There is an array of poles, fillers, barrels etc to improve their jumping techniques. There is also a horse walker in the yard which can take up to six horses."

The arguments in the appeal

29. The VO's primary case is that the whole Farm is a single hereditament and a single unit of assessment. The part of the Farm operated by the partners for the purposes of the agricultural elements of their business is exempt from non-domestic rates so the only part that falls to be assessed is the area used for the various equestrian purposes.

30. The VO's alternative case is that the two equestrian yards form a single hereditament which is distinct from the remainder of the Farm and is in the rateable occupation of the partners. She says that if her primary case is rejected the two yards nevertheless form a single geographical unit used for a separate purpose from the rest of the Farm and that there is no basis for treating them as more than one hereditament.

31. The respondent's case is that she was in rateable occupation of a separate hereditament comprising the licenced yard alone and that it should appear in the rating list with its own assessment. She argues that as a licenced racehorse trainer she alone had actual and exclusive use of the licenced yard. That use was beneficial for her purposes of training racehorses and that in demonstrating security of tenure for a minimum of 12 months, the occupation was not transient. In addition, she could have neither actual nor beneficial occupation of the point-to-point yard as she was prohibited by BHA rules from doing so.

32. Mr Marriott also submitted that in any event the two yards were in different modes or categories of occupation and that the activities in each were so distinct that separate assessments were warranted. He said that the adoption by the Valuation Office of a different valuation scheme for licenced and point-to-point yards demonstrated that the VO distinguished between the two types of yard and it was therefore appropriate to consider the yards in this case to be in different modes or categories of occupation and therefore separate hereditaments.

33. Mr Marriott also provided details of other establishments where licenced and point to point yards or other equestrian activities were run on the same premises, but separate assessments had been agreed. These included the following:

> (a) Stockhill Green, York Road, Thirkleby, Thirsk YO7 3AS – licenced yard and stud respectively run by a trainer and his wife.
>
> (b) Home Farm Stables, Eastnor, Ledbury, HR5 1 RD – licenced yard and point-to-point yard respectively run by a licenced trainer and his wife.
>
> (c) Andy Crook Racing, Ashgill Stables, Leyburn DL8 – licenced yard and livery business respectively run by trainer and his daughter.
>
> (d) Star Farm, Welham Road, Norton, Malton YO17 9QY - licenced yard and stud respectively run by a trainer and her daughter.

Relevant legal principles

34. Statute does not provide a definition of what constitutes a hereditament. Section 64(1) of the Local Government Finance Act 1988 defines a hereditament by reference to section 115(1) of the General Rate Act 1967 which in turn avoided the issue by saying only that that a hereditament is "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list." Whether a property falls to be shown as a separate item in the valuation list is determined by applying principles developed by judges through the cases.

35. Unsurprisingly the question of what constitutes a hereditament is not new. The leading authority is the decision of the Supreme Court in *Woolway (VO) v Mazars LLP* [2015] UKSC 53 which concerned two office floors occupied by a firm of accountants in a multi-let office building near Tower Bridge. The floors were not contiguous and could function independently. Lord Sumption JSC at paragraphs 5 and 6 said:

> "The question which arises in a case like this is a very simple one. Given that non-domestic rates are a tax on individual properties, what is the property in question? In principle, the fact that the same occupier holds two or more

> properties is irrelevant to the rateable status of any of them. He must pay rates separately on each. …
> 6. There are two principles on which these questions might be decided. One is geographical and depends simply on whether the premises said to constitute a hereditament constitute a single unit on a plan. The other is functional and depends on the use that is or might be made of it. The distinction was first applied in a series of rating cases in Scotland … These cases establish that the primary test is geographical, but that a functional test may in certain cases be relevant either to break up a geographical unit into several subjects for rating purposes or to unite geographically dispersed units …. By far the commonest application of the functional test is in derating cases. In these cases, the functional test serves to divide a single territorial block into different hereditaments where severable parts of it are used for quite different purposes. Thus a garage used in conjunction with a residence within the same curtilage will readily be treated as part of the same hereditament, whereas a factory within the same curtilage which is operated by the same occupier may not be. There are, however, rare cases in which function may also serve to aggregate geographically distinct subjects. It is with this latter question that the present appeal is concerned."

36. The first of Lord Sumption's tests is geographical. It can be seen from the plan that forms part of paragraph 8 that the two yards are contiguous and share a common boundary. It is easy to pass from one to the other. The same can be said of the farm as a whole; it surrounds the yards entirely. The farm and the two yards could be occupied separately but the geographical test indicates that this is one hereditament. It is not necessary to engage the functional test where two geographically distinct entities are treated as a single hereditament because the use of one is, in the words of Lord Sumption at paragraph 12 of *Mazars*, 'necessary to the effectual enjoyment of the other'. I note that a licenced racing yard must have access to gallops and the gallops at Holdenby North Lodge are separated from the yards by other areas of the Farm.

37. In *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area* [1949] 1 KB 344, rateable occupation was defined as having four ingredients: there must be actual occupation, which is exclusive for the purposes of the possessor, and the occupation must be of benefit to the possessor and not transient. In *Zhylzhaxynova* the Tribunal recalled that:

> "the requirement of 'exclusive' occupation does not preclude another person being in occupation, it simply means that the occupier must be the only one occupying the property for its particular purposes."

38. In *Hollywell Union and Halkyn Parish v Halkyn District Mines Drainage Co* [1895] AC 117 Lord Herschell LC at 126 said:

> "There are many cases where two persons may, without impropriety, be said to occupy the same land, and the question has sometimes arisen which of them is rateable. Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in

> occupation, but the occupation of the landlord is paramount, that of the lodger subordinate."

39. In *Westminster Council v Southern Railway Company Ltd* [1936] AC 511 Lord Russell at p.529 commented:

> "The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within whose confines the premises in question are situate, but who is in paramount occupation of the particular premises in question."

40. The degree of control over the premises in question is an important component in the determination of which of two or more occupying parties is in rateable occupation. In *Ludgate House Ltd v Ricketts (VO)* [2020] EWCA Civ 1637 the Court of Appeal determined that the landlord of an office building rather than property guardians who were occupying part was in rateable occupation of the whole property. The Court said at paragraph 40 that:

> "If there is more than one candidate, who is in rateable occupation depends on 'the position *and rights* of the parties in respect of the premises in question'".

And referring to the landlord's contractual ability to require the guardians to move to a different part of the building Lewison LJ said at paragraph 81:

> "… it is difficult to think of a greater retention of general control over premises than the ability to require the occupier to vacate the premises without notice".

41. In *Cardtronics UK Ltd v Sykes* [2020] UKSC 21 the Supreme Court considered whether ATM sites in supermarkets operated by banks who were part of the same supermarket chain were separate hereditaments. In *Kevin Prosser KC v Andrew Ricketts (VO)* [2024] UKUT 264 (LC) the Tribunal, at paragraph 53, explained the Supreme Court's reasoning as follows:

> "Lord Carnwath JSC, with whom the other members of the Supreme Court agreed, relied at [46], on Lord Herschell's illustration of the applicable principle in *Holywell Union* by reference to the example of a landlord and a lodger, where the landlord occupies the whole of the premises for the purpose of his business of letting lodgings. This Tribunal had been satisfied on the evidence that the retailers retained occupation of the ATM sites, notwithstanding the rights they had conferred on the banks which substantially restricted their own use of those sites, but having done so because the presence of the ATMs furthered their own business purposes. Both parties therefore derived a direct benefit from the use of the site for the same purpose and shared the economic fruits of the activity for which the space was used. That finding was sufficient, Lord Carnwath concluded, to support the conclusion that the sites remained in the occupation of the retailers."

Findings of fact

42. My primary finding is that the farm partnership is in occupation of the whole of the Farm including both yards.

43. Mrs Bailey is a partner in the partnership and was the only person capable of running the licenced racing yard as the licence was in her name, but it is the partnership that provides the site, carries out repairs, pays for the outgoings including staff and reaps the benefit in terms of earnings. The partners share a common purpose, namely to make a profit from the land and buildings that comprise the Farm from a variety of activities undertaken from it by the various partners. The Farm and the licenced racing yard are occupied together by the partnership but in order to satisfy BHA licensing, the use of some of the buildings and yard space are restricted to the stabling and training of horses under the control of Mrs Bailey. Toby Saunders and Mrs Bailey utilise separate parts of the Farm for different purposes but they jointly occupy the whole for a shared purpose, namely the profitable operation of the partnership.

44. The buildings and yard space that constitute the licenced racing yard are capable of being a separate hereditament in that they could be separately identified on a plan and they could be separately occupied by a third party. But there would be both legal and practical obstacles to any such third party occupancy. The tenancy agreement prohibits subletting, and it would be necessary to obtain the landlord's consent to a sub tenancy. Satisfactory access and sharing arrangements would need to be negotiated and a solution found to the division of utilities. None of these adjustments are currently required because the business conducted from the licenced yard is simply one aspect of the wider business conducted by the partnership.

45. I find that at the material day the partners, including Mrs Bailey, were in joint rateable occupation of the licenced racing yard and the remainder of the Farm.

46. Mr Bailey was in occupation of the point-to-point yard with the permission of Toby Saunders and without any formal tenancy or other occupancy agreement. He was not a member of the partnership but the partnership provided the buildings he occupied and met the costs of the operation he managed. If it made a profit the benefit went to the partnership. This yard was also capable of separate occupation subject to the same provisos that apply to the licenced yard.

Rateable occupation of the point-to-point yard

47. As I have found that Mr Bailey is in occupation of part it is therefore necessary to examine for the purposes of this appeal whether he is in *rateable* occupation. On the analysis in *John Laing* there are two occupiers of the point-to-point yard: the partnership and Mr Bailey. Which of the two should be the ratepayer can be unravelled by deciding which is in paramount occupation.

48. Control of the point-to-point yard rests with the tenant of the Farm who is in possession by reason of his tenancy but who shares occupation of the whole of the Farm with his partners for the purposes of the partnership business. There is no subtenancy and Mr Bailey can be required to leave without notice. He cannot exclude Toby or the other partners and in fact is reliant on them for the maintenance of the buildings he occupies. Toby has retained all of the rights his farm tenancy confers on him and enjoys them

together with his fellow partners. The partners also share in any profits of the point-to-point operation. It follows that Mr Bailey is not in rateable occupation of the point-to-point yard and there are no grounds for assessing it separately from the remainder of the Farm occupied by the partners.

Mode or category of occupation

49. It is necessary to deal with the second limb of Mr Marriott's argument that the uses of the two yards are distinct to the extent that they constitute different modes or categories of occupation. The Tribunal considered a similar argument in *Hughes (VO) v Exeter City Council* [2020] UKUT 7 (LC) regarding different types of museums and concluded at paragraph 205 that:

> 'The mode or category of occupation as defined by the VTE and the Respondent is itself of a specialised nature and it is necessary to be prudent about introducing further subdivisions. There is a risk of ending up with highly specialised, relatively small groupings of property and the grounds upon which the subdivision is advanced may not be sufficiently clear or coherent. The factors put forward by Mr Hughes at [202] (i), (iii) and (iv) above may be found in properties belonging to each of the two sub-categories for which he contends. In our judgment it is more realistic and preferable for the purpose of applying the rating hypothesis in this appeal to recognise that there is a broader, single mode or category containing a range of properties rather than claiming that there are narrower categories which are self-contained.'

50. I take the view that the yards are used for the same purpose, the training and stabling of horses. The adoption by the Valuation Officer of different approaches to valuation for licenced and point-to-point boxes is immaterial; they are in the same mode or category of occupation. It was not proposed that the equestrian yards should be separated from the remainder of the composite hereditament on the grounds that they are in a distinct category from agriculture. If her primary argument was accepted, and the whole of the property was found to be in single occupation, the VO did not herself suggest that separate entries for agricultural and equestrian areas were required.

51. Mr Marriott also supplied examples of other establishments which he said were occupied on the same or similar basis to the Farm in this case. The information provided lacked the detail required for a proper comparison to be made but in any case, the correct approach for the Tribunal in this instance is to apply the law to the facts of this case as it finds them. The practice of the VO in other selected cases is not relevant to that exercise.

Conclusion

52. I conclude that the Farm is a single, part exempt, composite hereditament. The appeal is therefore allowed. In practical terms the Valuation Office should now amend the rating

list to show a rateable value of £18,000 which is the figure agreed between the parties if the appeal was successful.

Mark Higgin FRICS FIRRV
7 October 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.